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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW GATREL and  
JUAN MARTINEZ,

Defendants.

No. CR 19-0036-JAK

GOVERNMENT'S EX PARTE APPLICATION  
TO CONTINUE TRIAL DATE AND  
PRETRIAL DEADLINES, AND FOR  
FINDINGS OF EXCLUDABLE DELAY UNDER  
THE SPEEDY TRIAL ACT; DECLARATION  
OF JULIA S. CHOE; PROPOSED ORDER

**CURRENT TRIAL DATE:** 10/20/20

**PROPOSED TRIAL DATE:** 1/26/21

**CURRENT PTC DATE:** 10/8/20

**PROPOSED PTC DATE:** 1/14/21

Plaintiff United States of America, by and through its counsel  
of record, the United States Attorney for the Central District of  
California and Assistant United States Attorneys Cameron L. Schroeder  
and Julia S. Choe, seeks entry of an order continuing the trial date  
and pretrial deadlines, and excluding time from the Speedy Trial Act  
calculation for excludable delay. The government understands that

1 defendant Matthew Gatrel opposes this request, and that defendant  
2 Juan Martinez does not oppose this request.

3 **BACKGROUND**

4 This case was set for trial on October 20, 2020. The Indictment  
5 in this case was filed on January 24, 2019. Defendant Martinez first  
6 appeared before a judicial officer of the court in which the charges  
7 in this case were pending on January 25, 2019. Defendant Gatrel  
8 first appeared before a judicial officer of the court in which the  
9 charges in this case were pending on February 8, 2019. The Speedy  
10 Trial Act, 18 U.S.C. § 3161, originally required that the trial  
11 commence on or before April 5, 2019 for defendant Martinez, and on or  
12 before April 19, 2019 for defendant Gatrel. Pursuant to stipulations  
13 filed by the parties, the trial has been continued to October 20,  
14 2020, and the Pretrial Conference to October 8, 2020. Defendants are  
15 both released on bond pending trial.

16 Defendants are charged with violations of 18 U.S.C. § 371  
17 (Conspiracy); 18 U.S.C. § 1349 (Conspiracy to Commit Wire Fraud); 18  
18 U.S.C. § 1030(a)(5)(A) (Unauthorized Impairment of a Protected  
19 Computer); and 18 U.S.C. § 2 (Aiding and Abetting). The government  
20 has produced discovery to the defense, including approximately 1000  
21 pages of reports, records, and other documentation, along with  
22 interview audio recordings, 2703 search warrant materials and  
23 responses, and various native files relating to the websites and  
24 databases at issue in the charges. As defendant Gatrel has indicated  
25 he wishes to proceed to trial, the government anticipates producing  
26 additional discovery, particularly in the form of Jencks Act  
27 statements and expert disclosures in preparation for trial. The  
28

1 government estimates that its case-in-chief will last approximately  
2 five to seven days.

3       On March 13, 2020, following the President's declaration of a  
4 national emergency in response to COVID-19, the Court entered a  
5 General Order suspending jury selection and jury trials scheduled to  
6 begin before April 13, 2020. C.D. Cal. General Order No. 20-02, In  
7 Re: Coronavirus Public Emergency, Order Concerning Jury Trials and  
8 Other Proceedings (Mar. 13, 2020). The Court most recently renewed  
9 that suspension, until a "date to be determined," on August 6, 2020.  
10 C.D. Cal. General Order No. 20-09, In Re: Coronavirus Public  
11 Emergency, Further Order Concerning Jury Trials and Other Proceedings  
12 (Aug. 6, 2020).

13       Also on March 13, 2020, the Court imposed health- and travel-  
14 related limitations on access to Court facilities. C.D. Cal. General  
15 Order No. 20-03, In Re: Coronavirus Public Emergency, Order  
16 Concerning Access to Court Facilities (March 13, 2020). On March 19,  
17 2020, by Order of the Chief Judge, the Court instituted its  
18 Continuity of Operations Plan ("COOP"), closing all Central District  
19 of California courthouses to the public (except for hearings on  
20 criminal duty matters) and taking other emergency actions. C.D. Cal.  
21 Order of the Chief Judge No. 20-042 (March 19, 2020). On March 29  
22 and 31, recognizing COVID-19's continued spread in the community, the  
23 Court took further action: implementing video-conference and  
24 telephonic hearings and suspending all grand-jury proceedings. C.D.  
25 Cal. Orders of the Chief Judge Nos. 20-043 (March 29, 2020) and 20-  
26 044 (March 31, 2020). The Court's most recent General Order  
27 maintains court facilities' general closure to the public; however,  
28 it allows in-person criminal hearings for defendants who do not

1 consent to remote appearance, and it allows up to 10 members of the  
2 public to attend. General Order No. 20-09, at 2-3 (August 6, 2020).

3       These orders were imposed based on (1) the California Governor's  
4 declaration of a public-health emergency in response to the spread of  
5 COVID-19, as well as (2) the Centers for Disease Control's advice  
6 regarding reducing the possibility of exposure to the virus and  
7 slowing the spread of the disease. See, e.g., General Order 20-02,  
8 at 1. The Chief Judge has recognized that, during the COVID-19  
9 crisis, all gatherings should be limited to no more than 10 people  
10 and elderly and other vulnerable people should avoid person-to-person  
11 contact altogether. See Order of the Chief Judge No. 20-042, at 1-2.  
12 The Court has more broadly recognized CDC guidance advising  
13 "precautions to reduce the possibility of exposure to the virus and  
14 slow the spread of the disease[.]" General Order 20-09, at 1.

15       Local and state governments have adopted similar policies. On  
16 March 19, 2020, both Los Angeles Mayor Eric Garcetti and California  
17 Governor Gavin Newsom issued emergency orders requiring residents to  
18 "stay home," subject to limited exceptions. California Executive  
19 Order N-33-20 (March 19, 2020); accord Safer at Home, Public Order  
20 Under City of Los Angeles Emergency Authority ¶ 1 (March 19, 2020).  
21 Subject to similarly limited exceptions, all travel was prohibited.  
22 Safer At Home ¶ 4. Non-essential businesses requiring in-person  
23 attendance by workers were ordered to cease operations. Id. ¶ 2.  
24 All schools in the Los Angeles Unified School District remain closed  
25 to in-person classes.

26       As these orders reflect, the novel coronavirus pandemic is a  
27 global emergency that is unprecedented in modern history. As data  
28 from both the Centers for Disease Control and the California

1 Department of Public Health reflect, the virus has spread through the  
2 United States community at an alarming rate. See Coronavirus Disease  
3 2019 (COVID-19) in the U.S., Centers for Disease Control and  
4 Prevention (updated daily), available at  
5 [https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)  
6 [us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html); Coronavirus Disease 2019 (COVID-19), California Department  
7 of Public Health (updated daily), available at  
8 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx)  
9 [.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx). The death toll, across the world, is staggering.

10       The Court's most recent General Order concluded, based on these  
11 facts, that "in order to protect public health, and in order to  
12 reduce the size of public gatherings and reduce unnecessary travel,"  
13 it was necessary to suspend criminal jury trials until further  
14 notice. General Order 20-09, at 1 (August 6, 2020). The Court  
15 concluded that, given the increased rates of COVID-19-related  
16 hospitalization and death over the preceding 30 days, "holding jury  
17 trials substantially increases the chances of transmitting the  
18 Coronavirus," and it would thus "place prospective jurors, defendant,  
19 attorneys, and court personnel at unnecessary risk." Id. at 3. The  
20 Court concluded that suspending jury trials thus served the ends of  
21 justice and outweighed the interests of the public and defendants in  
22 a speedy trial. Id.

23       The Central District of California thus has not adopted any  
24 protocols for safely conducting jury trials. See id.

#### 25                   DISCUSSION

26       Here, the time between October 20, 2020 and January 26, 2021  
27 should be excluded from the Speedy Trial Act.  
28

1 The Speedy Trial Act generally requires a trial to begin within  
2 70 days of indictment or initial appearance, whichever occurs later,  
3 18 U.S.C. § 3161(c)(1), and entitles the defendant to dismissal of  
4 the charges (with or without prejudice) if that deadline is not met,  
5 § 3162(a)(2).

6 Certain periods of time, however, are excluded from the Speedy  
7 Trial Act's trial clock. Id. § 3161(h). Some periods of time are  
8 automatically excluded, including periods of delay resulting from the  
9 absence or unavailability of the defendant or an essential witness.  
10 Id. § 3161(h)(3)(A). Other periods of time are excluded only when a  
11 judge continues a trial and finds, on the record, that "the ends of  
12 justice served by taking such action outweigh the best interest of  
13 the public and the defendant in a speedy trial." Id.  
14 § 3161(h)(7)(A).

15 In this case, the time between October 20, 2020 and January 26,  
16 2021 should be excluded from the Speedy Trial Act under the ends-of-  
17 justice provision, 18 U.S.C. § 3161(h)(7)(A).

18 Although General Orders 20-02 through 20-09 address district-  
19 wide health concerns and make Speedy Trial Act findings under  
20 § 3161(h)(7)(A), individualized findings are nevertheless necessary  
21 in this case. See General Order 20-02 at 2 ¶ 4; General Order 20-09  
22 at 2 ¶ 6(a). The Supreme Court has emphasized that the Speedy Trial  
23 Act's ends-of-justice provision, § 3161(h)(7)(A), "counteract[s]  
24 substantive openendedness with procedural strictness," "demand[ing]  
25 on-the-record findings" in a continued case. Zedner v. United  
26 States, 547 U.S. 489, 500 (2006). "[W]ithout on-the-record findings,  
27 there can be no exclusion under" § 3161(h)(7)(A). Moreover, any such  
28 failure generally cannot be harmless. Id. at 509.

1       Judged by the plain language of the Speedy Trial Act, the  
2 General Orders require specific supplementation here. Specifically,  
3 ends-of-justice continuances are excludable only if "the judge  
4 granted such continuance on the basis of his findings that the ends  
5 of justice served by taking such action outweigh the best interest of  
6 the public and the defendant in a speedy trial." 18 U.S.C.  
7 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the  
8 court sets forth, in the record of the case, either orally or in  
9 writing, its reasons for finding that the ends of justice served by  
10 the granting of such continuance outweigh the best interests of the  
11 public and the defendant in a speedy trial." Id. The period must  
12 also be "specifically limited in time." United States v. Lewis, 611  
13 F.3d 1172, 1176 (9th Cir. 2010).

14       As the above facts reflect, the ends of justice justify  
15 excludable time here. Pandemic, like natural disaster or other  
16 emergency, grants this Court the discretion to order an ends-of-  
17 justice continuance. "Although the drafters of the Speedy Trial Act  
18 did not provide a particular exclusion of time for such public  
19 emergencies (no doubt failing to contemplate, in the more innocent  
20 days of 1974, that emergencies such as this would ever occur), the  
21 discretionary interests-of-justice exclusion" certainly covers this  
22 situation. United States v. Correa, 182 F. Supp. 2d 326, 329  
23 (S.D.N.Y. 2001) (addressing September 11 attacks); see Furlow v.  
24 United States, 644 F.2d 764, 767-69 (9th Cir. 1981) (affirming Speedy  
25 Trial exclusion after eruption of Mount St. Helens); accord United  
26 States v. Stallings, 701 F. App'x 164, 170-71 (3d Cir. 2017) (same,  
27 after prosecutor had "family emergency"); United States v. Hale, 685  
28 F.3d 522, 533-36 (5th Cir. 2012) (same, where case agent had

1 "catastrophic family medical emergency"); United States v. Scott, 245  
2 Fed. Appx. 391, 394 (5th Cir. 2007) (same, after Hurricane Katrina);  
3 United States v. Richman, 600 F.2d 286, 292, 293-94 (1st Cir. 1979)  
4 (same, after a "paralyzing blizzard" and the informant was  
5 hospitalized).

6 Here, the public health risks outlined above--and the findings  
7 articulated in General Orders 20-02 and 20-09--justify a continuance.  
8 As the President, the California governor, the Los Angeles mayor, and  
9 this Court's own General Orders have recognized, we are in the midst  
10 of a grave public-health emergency requiring people to take extreme  
11 measures to limit contact with one another. The Central District of  
12 California has no established jury-trial protocol at present;  
13 instead, the Court has concluded that jury trials would "place  
14 prospective jurors, defendant, attorneys, and court personnel at  
15 unnecessary risk." General Order 20-09 at 3 ¶ 6(a). In the absence  
16 of such a district-wide protocol, proceeding with a jury trial is  
17 unsafe.

18 An ends-of-justice delay is particularly apt in this case  
19 because:

- 20 • The closure of public schools in Los Angeles and other  
21 municipalities in this District (through parts of the fall of  
22 2020) may require a significant number of jurors to handle  
23 child-care responsibilities and thus be unavailable for jury  
24 service.
- 25 • It will be almost impossible for jurors -- particularly  
26 jurors over 65 -- to maintain adequate social distance during  
27 jury selection, trial, and deliberations. Indeed, to leave  
28 their homes to come to court, such jurors would violate the  
recommendations of the Centers for Disease Control and  
multiple other public-health authorities.
- This trial involves several witnesses who would be required  
to travel from other states or possibly another country.



1       These witnesses thus would put themselves and others at risk  
2       if they were to come to court during this crisis. Multiple  
3       public agencies have recommended against unnecessary travel,  
      particularly for vulnerable populations.

- 4       • Government counsel and United States Attorney's Office  
5       personnel (including victim-witness specialists) have been  
6       encouraged to telework to minimize personal contact to the  
7       greatest extent possible. Trial preparation necessarily  
      involves close contact with witnesses, inconsistent with  
      advice from the Centers for Disease Control.

8       In addition, due to the restrictions imposed by current public-  
9       health concerns, it is also unreasonable to expect adequate  
10      preparation for pretrial proceedings or for the trial itself within  
11      Speedy Trial Act time limits. Under these unusual and emergent  
12      circumstances, denial of a continuance is likely to deny all counsel  
13      reasonable time necessary for effective preparation, taking into  
14      account the exercise of due diligence.

15      Based on the foregoing, the Court should enter a case-specific  
16      order finding excludable time under 18 U.S.C. § 3161(h)(7)(A).  
17      However, nothing in the Court's order should preclude a finding that

18      //

19      //

1 other provisions of the Speedy Trial Act dictate that additional time  
2 periods are excluded from the period within which trial must  
3 commence.

4  
5 Dated: September 11, 2020      Respectfully submitted,

6                                      NICOLA T. HANNA  
7                                      United States Attorney

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